

# HOUSE BILL No. 1684

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-1-2-1; IC 5-14-3-4; IC 16-41-37; IC 22-2; IC 22-5; IC 22-6-5; IC 22-9-1.

**Synopsis:** Employee protections. Provides that findings of fact and decisions in which final action was taken that resulted in the discharge or suspension without pay of a public employee are public records. Requires an employer that provides an enclosed employee lounge or break room: (1) to designate and post it as a nonsmoking area; and (2) to provide at least the same number of enclosed nonsmoking employee lounges or break rooms as those in which smoking is permitted. Provides for civil penalties for: (1) a person who smokes in an enclosed employee lounge or break room that is posted and designated as a nonsmoking area; or (2) an employer who fails to furnish nonsmoking areas in the manner prescribed. Requires payment of regular wages to an employee who: (1) performs jury service; or (2) reports to a work site at an employer's request. Requires an employer to provide lunch periods and paid rest breaks under certain conditions. Allows an employee employed by an employer with at least 20 but not more than 49 employees to take family leave in certain circumstances. Gives an employer discretion not to grant family leave to the highest paid 10% of employees. Permits an employer to adopt a uniform policy to govern family leaves. Protects an employee's employment and benefit rights while taking a family leave. Permits an employee to bring a civil action against a private employer that disciplines or terminates the employee for reporting violations of federal, state, or local laws. Permits an employee to bring a civil action against a former employer when the employee is discharged for other than just cause. Requires certain employers to give written notice before plant closings and mass layoffs. Makes it unlawful to discriminate based on marital status or sexual preference. Redefines "employer" for discrimination claims to include a person employing at least one person in Indiana.

**Effective:** July 1, 2003; January 1, 2004.

**Liggett**

January 21, 2003, read first time and referred to Committee on Labor and Employment.



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Introduced

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1684

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 4-1-2-1 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2003]: Sec. 1. It is the intent of this chapter that  
3 state offices be open and able to conduct public business at all times  
4 during an eight and one-half (8 1/2) hour working day. Each employee  
5 shall work for a full seven and one-half (7 1/2) hours each working day  
6 and provision for a one (1) hour lunch period shall be provided each  
7 employee. Lunch hours of employees shall be staggered to permit the  
8 conduct of business at all times during a working day. **Rest breaks**  
9 **shall be provided as set forth in IC 22-2-14.** It shall be lawful for  
10 state offices to close their doors for business from the close of the  
11 working day each Friday or in the event Friday is a legal holiday, then  
12 from the close of the working day on the Thursday which immediately  
13 precedes such legal holiday, until the commencement of the working  
14 day on the next following Monday, or in the event Monday is a legal  
15 holiday, then until the commencement of the working day on the  
16 Tuesday which immediately follows such legal holiday; provided,  
17 however, that the state library may be kept open until noon Saturdays

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in the discretion of the Indiana library and historical board.

SECTION 2. IC 5-14-3-4, AS AMENDED BY P.L.1-2002, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

- (1) Those declared confidential by state statute.
  - (2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.
  - (3) Those required to be kept confidential by federal law.
  - (4) Records containing trade secrets.
  - (5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.
  - (6) Information concerning research, including actual research documents, conducted under the auspices of an institution of higher education, including information:
    - (A) concerning any negotiations made with respect to the research; and
    - (B) received from another party involved in the research.
  - (7) Grade transcripts and license examination scores obtained as part of a licensure process.
  - (8) Those declared confidential by or under rules adopted by the supreme court of Indiana.
  - (9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.
  - (10) Application information declared confidential by the twenty-first century research and technology fund board under IC 4-4-5.1.
  - (11) The following personal information concerning a customer of a municipally owned utility (as defined in IC 8-1-2-1):
    - (A) Telephone number.
    - (B) Social Security number.
    - (C) Address.
  - (12) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.
- (b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:
- (1) Investigatory records of law enforcement agencies. However,



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certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

- (A) a public agency;
- (B) the state; or
- (C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of his scores.

(5) The following:

(A) Records relating to negotiations between the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the department of commerce, the Indiana development finance authority, the Indiana film commission, the Indiana business modernization and technology corporation, or economic development commissions to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the department of commerce shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for

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public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) information concerning ~~disciplinary actions~~ **findings of fact and decisions** in which final action has been taken and that resulted in the employee being ~~disciplined~~ **suspended without pay** or discharged.

However, all personnel file information shall be made available to the affected employee or his representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a recordkeeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

(A) the donor requires nondisclosure of his identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

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(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing advisory committee. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations that concern the driver.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(c) Notwithstanding section 3 of this chapter, a public agency is not required to create or provide copies of lists of names and addresses, unless the public agency is required to publish such lists and disseminate them to the public pursuant to statute. However, if a public agency has created a list of names and addresses, it must permit a person to inspect and make memoranda abstracts from the lists unless access to the lists is prohibited by law. The following lists of names and addresses may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes:

(1) A list of employees of a public agency.

(2) A list of persons attending conferences or meetings at a state institution of higher education or of persons involved in programs or activities conducted or supervised by the state institution of higher education.

(3) A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a policy:

(A) prohibiting the disclosure of the list to commercial entities for commercial purposes; or

(B) specifying the classes or categories of commercial entities to which the list may not be disclosed or by which the list may

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1 not be used for commercial purposes.  
 2 A policy adopted under subdivision (3) must be uniform and may not  
 3 discriminate among similarly situated commercial entities.

4 (d) Nothing contained in subsection (b) shall limit or affect the right  
 5 of a person to inspect and copy a public record required or directed to  
 6 be made by any statute or by any rule of a public agency.

7 (e) Notwithstanding any other law, a public record that is classified  
 8 as confidential, other than a record concerning an adoption, shall be  
 9 made available for inspection and copying seventy-five (75) years after  
 10 the creation of that record.

11 (f) Notwithstanding subsection (e) and section 7 of this chapter:

12 (1) public records subject to IC 5-15 may be destroyed only in  
 13 accordance with record retention schedules under IC 5-15; or

14 (2) public records not subject to IC 5-15 may be destroyed in the  
 15 ordinary course of business.

16 SECTION 3. IC 16-41-37-1.5 IS ADDED TO THE INDIANA  
 17 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 18 [EFFECTIVE JULY 1, 2003]: **Sec. 1.5. As used in this chapter,**  
 19 **"employer" means any individual or type of organization,**  
 20 **including the state and its political subdivisions (as defined in**  
 21 **IC 36-1-2-13), that has in its employ at least one (1) individual.**

22 SECTION 4. IC 16-41-37-3.5 IS ADDED TO THE INDIANA  
 23 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 24 [EFFECTIVE JULY 1, 2003]: **Sec. 3.5 (a) An employer is not**  
 25 **required to provide or make available an enclosed employee lounge**  
 26 **or break room to employees. However, if an enclosed employee**  
 27 **lounge or break room is provided or made available, it must be**  
 28 **designated and posted as a nonsmoking area in the manner**  
 29 **provided for by section 6(c) of this chapter.**

30 (b) **If more than one (1) enclosed employee lounge or break**  
 31 **room is provided for employees by an employer, there must be at**  
 32 **least the same number of enclosed nonsmoking employee lounges**  
 33 **or break rooms as those in which smoking is permitted.**

34 SECTION 5. IC 16-41-37-4 IS AMENDED TO READ AS  
 35 FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 4. (a) A person who**  
 36 **smokes:**

37 (1) in a public building, except in an area designated as a smoking  
 38 area under section 5 of this chapter;

39 (2) in the retail area of a grocery store or drug store that is  
 40 designated as a nonsmoking area by the store's proprietor; ~~or~~

41 (3) in the dining area of a restaurant that is designated and posted  
 42 as the restaurant's nonsmoking area by the restaurant's proprietor;

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or

**(4) in an enclosed employee lounge or break room that is posted and designated as a nonsmoking area as set forth in section 6(c) of this chapter;**

commits a Class B infraction. However, the violation is a Class A infraction if the person has at least three (3) previous unrelated judgments for violating this section that are accrued within the twelve (12) months immediately preceding the violation.

**(b) An employer who violates section 3.5 of this chapter commits a Class A infraction.**

SECTION 6. IC 16-41-37-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) The official in charge of a public building shall do the following:

(1) Post conspicuous signs that read "Smoking Is Prohibited By State Law Except In Designated Smoking Areas" or other similar language.

(2) Request persons who are smoking in violation of section 4 of this chapter to refrain from smoking.

(3) Remove a person who is smoking in violation of section 4 of this chapter and fails to refrain from smoking after being requested to do so.

(b) The proprietor of a restaurant shall, under sections 4 and 5 of this chapter, post conspicuous signs at each entrance to the restaurant, informing the public of the establishment's smoking policy.

**(c) An employer shall, under sections 3.5 and 4(a)(4) of this chapter, designate and post as a nonsmoking area an enclosed employee lounge or break room if such is provided as set forth in section 3.5 of this chapter. If more than one (1) enclosed employee lounge or break room is provided for employees by an employer, each area that is provided as a nonsmoking area as set forth in section 3.5 of this chapter must be designated and posted as a nonsmoking area.**

SECTION 7. IC 16-41-37-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. The state department may waive the requirements of section 5(b), 5(c), ~~or 6(a), or 6(b)~~ of this chapter if the state department determines that:

(1) there are compelling reasons to do so; and

(2) the waiver will not significantly affect the health and comfort of nonsmokers.

SECTION 8. IC 22-2-2.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

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**Chapter 2.5. Miscellaneous Wage Provisions**

**Sec. 1. As used in this chapter, "employee" means an individual employed by an employer.**

**Sec. 2. As used in this chapter, "employer" means any individual or type of organization, including the state and its political subdivisions, that has in its employ at least one (1) individual.**

**Sec. 3. As used in this chapter, "wages" has the meaning set forth in IC 22-2-9-1.**

**Sec. 4. This chapter does not:**

- (1) affect the terms of a negotiated collective bargaining agreement or settlement agreement; or**
- (2) negate a bona fide agreement between an employee and employer.**

**Sec. 5. (a) Except as provided in subsection (c), after June 30, 2003, an employee who during the employee's regularly scheduled work hours:**

- (1) responds to a summons for jury service;**
- (2) serves as a juror; or**
- (3) attends court for prospective jury service;**

**is entitled to payment of the employee's regular wages for those work hours from the employee's employer.**

**(b) An employee's maximum payment under subsection (a) is the amount that the employee would have received had the employee worked the employee's regularly scheduled work hours instead of:**

- (1) responding to a summons for jury service;**
- (2) serving as a juror; or**
- (3) attending court for prospective jury service.**

**(c) In order to receive the compensation described in subsection (a), the employee is required to turn over to the employee's employer the amount paid to the employee for jury service minus any reimbursement for mileage and parking costs.**

**Sec. 6. (a) After June 30, 2003, except as provided in subsection (b), an employee who reports to a work site designated by the employee's employer ready and available to work is entitled to receive as minimum compensation for that day an amount equal to the employee's regular wages for four (4) hours.**

**(b) An employer is not required to make the payment under subsection (a), if any of the following apply:**

- (1) The employee voluntarily leaves the work site without the employer's permission and without good cause.**

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(2) The employer requests that the employee report to another work site and the employee fails to do so.

SECTION 9. IC 22-2-13 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

**Chapter 13. Employee Lunch Breaks**

**Sec. 1.** This chapter does not apply to a child covered by IC 20-8.1-4-20.5.

**Sec. 2.** This chapter does not:

- (1) affect the terms of a negotiated collective bargaining agreement or settlement agreement; or
- (2) negate a bona fide agreement between an employee and employer.

**Sec. 3.** As used in this chapter, "duty" means the active performance of functions required by an employer and does not imply physical presence at the location of employment.

**Sec. 4.** As used in this chapter, "employee" means a person employed or permitted to work or perform a service for remuneration or under a contract for hire, written or oral, express or implied, by an employer. However, the term does not include the following:

- (1) A member of a religious order who is performing a service for that order.
- (2) An ordained, a commissioned, or a licensed minister, priest, rabbi, sexton, or Christian Science reader who is performing services for a religious organization.
- (3) A person who is employed as a salesperson, if all of the person's services are performed for remuneration solely by commission.
- (4) A person employed in an executive, an administrative, or a professional occupation if the person has the authority to employ or discharge.
- (5) An employee with respect to whom the federal Interstate Commerce Commission has power to establish qualifications and maximum hours of service under the federal Motor Carrier Safety Act (49 U.S.C. 31502(b)) or an employee of a carrier subject to IC 8-2.1.
- (6) An employee subject to the federal Railway Labor Act (45 U.S.C. 151 et seq.).
- (7) An employee of the state subject to IC 4-1-2-1.

**Sec. 5.** As used in this chapter, "employer" means any individual or type of organization, including a political subdivision

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(as defined in IC 36-1-2-13), that has in its employ one (1) or more individuals. However, the term does not include the state.

Sec. 6. (a) An employer shall provide a lunch break of at least thirty (30) minutes to an employee who is scheduled to be on duty for at least six (6) consecutive hours.

(b) The lunch break must be available immediately after the first four (4) hour period of duty.

(c) If an employee works more than twelve (12) consecutive hours, the employee shall be provided the opportunity for another lunch break of at least thirty (30) minutes.

(d) If:

(1) the duties of the position do not allow the employee to take a lunch break;

(2) the lunch break normally is to be unpaid; and

(3) the employee works through the lunch break;

the employee shall be paid for the time of the lunch break at the normal rate.

(e) This section does not apply when the employer has only one (1) employee on duty during a period of four (4) or more consecutive hours.

Sec. 7. (a) A person who violates this chapter commits a Class C infraction.

(b) Each time a person violates this chapter, the person commits a separate infraction.

SECTION 10. IC 22-2-14 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

#### **Chapter 14. Employee Rest Breaks**

Sec. 1. This chapter does not apply to a child covered by IC 20-8.1-4-20.5.

Sec. 2. This chapter does not:

(1) affect the terms of a negotiated collective bargaining agreement or settlement agreement; or

(2) negate a bona fide agreement between an employee and employer.

Sec. 3. As used in this chapter, "duty" means the active performance of functions required by an employer and does not imply physical presence at the location of employment.

Sec. 4. As used in this chapter, "employee" means a person employed or permitted to work or perform a service for remuneration or under a contract for hire, written or oral, expressed or implied, by an employer. However, the term does not

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1 include the following:

2 (1) A member of a religious order who is performing a service  
3 for that order.

4 (2) An ordained, a commissioned, or a licensed minister,  
5 priest, rabbi, sexton, or Christian Science reader who is  
6 performing services for a religious organization.

7 (3) A person who is employed as a salesperson, if all of the  
8 person's services are performed for remuneration solely by  
9 commission.

10 (4) A person employed in an executive, an administrative, or  
11 a professional occupation if the person has the authority to  
12 employ or discharge.

13 (5) An employee with respect to whom the federal Interstate  
14 Commerce Commission has power to establish qualifications  
15 and maximum hours of service under the federal Motor  
16 Carrier Safety Act (49 U.S.C. 31502(b)) or an employee of a  
17 carrier subject to IC 8-2.1.

18 (6) An employee subject to the federal Railway Labor Act (45  
19 U.S.C. 151 et seq.).

20 Sec. 5. As used in this chapter, "employer" means any  
21 individual or type of organization, including the state and its  
22 political subdivisions (as defined in IC 36-1-2-13), that has in its  
23 employ at least one (1) individual.

24 Sec. 6. (a) An employer shall provide a paid rest break of ten  
25 (10) minutes to an employee who has been on duty for at least two  
26 (2) continuous hours.

27 (b) The employer shall provide a rest break as provided in  
28 subsection (a) after every two (2) continuous hours of work.

29 (c) If the employee has taken a lunch break after four (4)  
30 continuous hours of work, as provided in IC 22-2-13-6, the  
31 employee is not entitled to a rest break after the second two (2)  
32 hour period.

33 (d) This section does not apply when the employer has only one  
34 (1) employee on duty during a period of two (2) or more  
35 consecutive hours.

36 Sec. 7. (a) A person who violates this chapter commits a Class  
37 C infraction.

38 (b) Each time a person violates this chapter, the person commits  
39 a separate infraction.

40 SECTION 11. IC 22-2-15 IS ADDED TO THE INDIANA CODE  
41 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
42 JULY 1, 2003]:



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**Chapter 15. Family Leave**

**Sec. 1. As used in this chapter, "child" means an individual:**

**(1) who is:**

- (A) the biological child of an employee;**
- (B) the adopted child of an employee;**
- (C) the foster child of an employee;**
- (D) the stepchild of an employee;**
- (E) the ward of an employee; or**
- (F) placed in the proposed adoptive home of an employee under IC 31-19-7; and**

**(2) who is either:**

- (A) less than eighteen (18) years of age; or**
- (B) mentally or physically incapacitated to the extent that the individual is not self-sufficient.**

**Sec. 2. As used in this chapter, "Christian Science practitioner" means a Christian Science practitioner who is listed in The Christian Science Journal.**

**Sec. 3. As used in this chapter, "commissioner" refers to the commissioner of labor.**

**Sec. 4. As used in this chapter, "employee" means an individual who:**

- (1) has been employed for at least twelve (12) months by an employer from whom family leave is requested under this chapter; and**
- (2) worked at least one thousand five hundred (1,500) hours for the employer in the fifty-two (52) weeks immediately preceding the week that the individual begins a period of family leave under this chapter.**

**Sec. 5. As used in this chapter, "employer" means:**

- (1) an individual;**
- (2) a partnership;**
- (3) an association;**
- (4) a limited liability company;**
- (5) a corporation; or**
- (6) a business trust;**

**that employs at least twenty (20) but not more than forty-nine (49) employees for each working day during each of twenty (20) or more calendar work weeks in the current or preceding calendar year. The term does not include a municipal corporation (as defined in IC 36-1-2-10).**

**Sec. 6. As used in this chapter, "family leave" means an absence from an employee's employment that is taken to carry out a family**

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responsibility described in section 11 of this chapter.

Sec. 7. As used in this chapter, "health care provider" includes any of the following:

(1) A health care provider listed in the definitions set forth in IC 16-18-2-163.

(2) A Christian Science practitioner.

Sec. 8. As used in this chapter, "parent" refers to:

(1) a biological parent;

(2) a foster parent;

(3) an adoptive parent;

(4) a mother-in-law;

(5) a father-in-law;

(6) a stepparent; or

(7) a legal guardian.

Sec. 9. As used in this chapter, "spouse" means the individual to whom an employee is married.

Sec. 10. As used in this chapter, "work week" means:

(1) a calendar week;

(2) a work week as defined in a labor contract; or

(3) a work period consisting of a fourteen (14) day period if:

(A) the employee is employed by a hospital or establishment engaged in the care of the sick, aged, or mentally ill; and

(B) the employee is subject to overtime compensation under 29 U.S.C. 207(j).

Sec. 11. Subject to sections 12 through 26 of this chapter, after December 31, 2003, an employee is entitled to take family leave from the employee's employment for any part of a day to do one (1) or more of the following:

(1) Receive prenatal care or counseling related to the birth or care of the employee's child.

(2) Prepare for the birth of the employee's child during the six (6) weeks before the expected birth of the child.

(3) Give birth to the employee's child or recover from or attend the birth of the employee's child.

(4) Care for or visit with the employee's child or the employee's child's biological mother during the six (6) weeks after:

(A) the birth of the child; or

(B) the placement of the child in the employee's home by a court, licensed child placing agency, or a county office of family and children.



**(5) Attend:**

**(A) legal proceedings;**

**(B) interviews; or**

**(C) counseling sessions;**

**that are related to the placement of a child in the home of the employee by a court, licensed child placing agency, or a county office of family and children.**

**(6) Visit or provide care and supervision for a child, parent, or spouse of the employee who suffers from an illness, injury, or other health or mental health condition.**

**(7) Accompany the employee's child, parent, or spouse to an appointment with a health care provider.**

**Sec. 12. (a) This section does not apply to an employee who:**

**(1) is employed by a hospital or establishment engaged in the care of the sick, aged, or mentally ill;**

**(2) is subject to the overtime compensation under 29 U.S.C. 207(j); and**

**(3) works a work week, as defined in section 10(3) of this chapter.**

**(b) An employee may not take more than:**

**(1) eight (8) work weeks of family leave in a twelve (12) month period for the purposes set forth in section 11(1) through 11(5) of this chapter; or**

**(2) six (6) work weeks of family leave in a twelve (12) month period for the purposes set forth in section 11(6) through 11(7) of this chapter.**

**Sec. 13. (a) This section applies to an employee who:**

**(1) is employed by a hospital or establishment engaged in the care of the sick, aged, or mentally ill;**

**(2) is subject to the overtime compensation under 29 U.S.C. 207(j); and**

**(3) works a work week as defined in section 10(3) of this chapter.**

**(b) An employee may not take more than:**

**(1) four (4) work weeks of family leave in a twelve (12) month period for the purposes set forth in section 11(1) through 11(5) of this chapter; or**

**(2) three (3) work weeks of family leave in a twelve (12) month period for the purposes set forth in section 11(6) through 11(7) of this chapter.**

**Sec. 14. This chapter does not grant a right of family leave to an employee who is employed by the employee's parent, spouse, or**

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1 child.

2 Sec. 15. (a) This chapter does not grant a right of family leave  
3 to an employee who is among the highest paid ten percent (10%)  
4 of the employees employed by the employer, if the employer  
5 believes that to grant family leave to the employee would cause  
6 substantial and grievous economic injury to the operations of the  
7 employer.

8 (b) In order for the employer to deny a period of family leave to  
9 the employee, the employer must notify the employee of the denial  
10 of family leave at the time that the family leave is requested under  
11 section 20 of this chapter.

12 Sec. 16. This chapter does not mandate that salary or wages be  
13 paid to an employee on family leave unless the salary or wages are  
14 paid under any of the following:

- 15 (1) An agreement between the employer and employee.
- 16 (2) A labor contract between the employer and a  
17 representative of the employee.
- 18 (3) A policy of the employer.

19 Sec. 17. This chapter does not prohibit the employee from taking  
20 leave granted under any of the following:

- 21 (1) Another law.
- 22 (2) A contractual agreement between the employee and  
23 employer or a representative of the employee and the  
24 employer.
- 25 (3) A policy of the employer.

26 Sec. 18. For purposes of calculating family leave taken by an  
27 employee under section 11 of this chapter, an employee shall be  
28 treated as taking family leave as follows:

- 29 (1) One-half (1/2) day of family leave if, during a day, an  
30 employee takes not more than three and three-fourths (3 3/4)  
31 hours of leave from work that the employer otherwise would  
32 have scheduled for the employee, excluding any period  
33 routinely authorized by the employer for meals or rest.
- 34 (2) One (1) day of family leave if, during a day, an employee  
35 takes more than three and three-fourths (3 3/4) hours of leave  
36 from work that the employer otherwise would have scheduled  
37 for the employee, excluding any period routinely authorized  
38 by the employer for meals or rest.

39 Sec. 19. If an employee intends to take family leave that consists  
40 of an absence from employment:

- 41 (1) for less than an entire workday; or
- 42 (2) to attend a scheduled appointment with a health care

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provider;  
the employee must make a reasonable effort to schedule the family leave so that the leave does not unduly disrupt the employer's operations.

**Sec. 20. (a)** An employee must give reasonable advance notice to an employer of the following:

- (1) The employee's intent to take family leave.
- (2) The expected duration of the family leave.
- (3) The purpose for which the employee intends to use the family leave.

(b) If the employee intends to extend a family leave beyond the time specified in the employee's initial notice, the employee shall notify the employer of the expected duration of the extended leave within a reasonable time after the employee discovers the need for the extended leave.

(c) If an emergency occurs that cannot be reasonably anticipated, an employee may comply with subsection (a) by giving an oral notice to the employee's employer within a reasonable time before or after the employee begins the family leave.

**Sec. 21. (a)** If an employee takes family leave under section 11 of this chapter for more than three consecutive (3) days that the employee has been scheduled to work, the employer may require the employee to provide certification:

- (1) by the health care provider providing services as provided in section 11(1), 11(3) or 11(7) of this chapter; or
- (2) by a person involved in an activity described in section 11(5) of this chapter;

that is sufficient under subsection (b) or (c). The employee shall provide the employer with the certification not later than ten (10) days after the employee returns to work.

(b) This subsection applies if an employee takes family leave for a reason described in section 11(1), 11(3), or 11(7) of this chapter. The certification under subsection (a) is sufficient if the certification states the following:

- (1) The name of the person who needs the employee's care and the relationship of that person to the employee.
- (2) The reason for the family leave.
- (3) The date the condition began that required the employee to take family leave.
- (4) The probable duration of the condition.
- (5) An estimate of the amount of time that the employee will need to care for the employee's child, spouse, or parent.

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(c) This subsection applies if an employee takes family leave for a reason described in section 11(5) of this chapter. The certification under subsection (a) is sufficient if the certification states the following:

- (1) The reason for the family leave.
- (2) The location where the employee will attend the activity that is the reason for the family leave.
- (3) An estimate of the amount of time that is required for the employee to attend the activity that is the reason for the family leave.

Sec. 22. (a) Family leave taken by an employee must be in compliance with the policy adopted by an employer under this section.

(b) An employer may adopt a written policy to govern the following:

- (1) The scheduling of family leave for part of a workday under section 18 of this chapter.
- (2) Notices to be provided under section 20 of this chapter.

The policy may not unreasonably interfere with the exercise of the family responsibilities described in section 11 of this chapter.

(c) Except as provided in section 15 of this chapter, application of or granting leave under this chapter must be uniform to all of the employees of the employer.

(d) To be applicable to an employee, a written policy issued under subsection (b) must be conspicuously and continuously posted in the area in which the employee is routinely employed or disseminated to the employee in a manner reasonably intended to give notice for at least thirty (30) working days before the employee takes family leave to which the policy applies.

Sec. 23. (a) Except as provided in subsection (b), if an employee takes family leave in compliance with sections 11 through 22 of this chapter and subsequently returns to work, the employee's employer shall immediately do one (1) of the following upon the employee's return to work.

- (1) Return the employee to the position of employment that the employee had before the employee took the family leave if the employer has not filled or eliminated the employee's previous position.
- (2) Place the employee in another position of employment that provides compensation, benefits, working hours, working shifts, and other terms and conditions equivalent to the position of employment that the employee had before the

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employee took the family leave if the employer has filled the employee's previous position.

(b) If an employee returns to work before the end of the family leave that the employee specified in the employee's notice to the employer under section 20 of this chapter, the employer shall comply with subsection (a) within a reasonable time after the employee returns to work. A delay in compliance may not extend beyond the end of the family leave specified in the employee's notice.

Sec. 24. Except as provided in:

- (1) section 25 of this chapter;
- (2) an agreement; or
- (3) an employer's policy;

an employee who is on family leave is not entitled to compensation, additional seniority, or any other benefit that the employee would be entitled to receive if the employee were available for work.

Sec. 25. During the time an employee is on family leave, the employer shall continue to provide group health insurance coverage on the same terms and conditions in effect at the time the leave began. For an employee who is required to make a contribution for participation in the group health insurance plan while the employee is not on leave, the employer shall make group health insurance premium contributions during the time the employee is on family leave only if the employee continues to make the required contributions while on leave.

Sec. 26. An employer and employee may agree to alternative employment conditions or terms during the time the employee is on family leave. An agreement under this section does not limit an employee's right to family leave.

Sec. 27. A notice in a form approved by the commissioner setting forth the rights of employees under this chapter must be conspicuously and continuously posted by the employer in the area in which the employee is routinely employed or disseminated to the employee in a manner reasonably intended to give notice.

Sec. 28. A person may not discharge or otherwise discriminate against a person who does any of the following:

- (1) Opposes a practice prohibited under this chapter.
- (2) Files a charge, institutes a proceeding, or causes another person to file a charge or institute a proceeding concerning the rights and duties under this chapter.
- (3) Assists or intends to assist in an investigation or a proceeding concerning the rights and duties under this

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(4) Testifies or intends to testify in an investigation or a proceeding concerning the rights and duties under this chapter.

Sec. 29. The commissioner may adopt rules under IC 4-22-2 to establish uniform standards to implement this chapter.

Sec. 30. The commissioner shall enforce this chapter.

Sec. 31. (a) A person who is aggrieved by an alleged violation of this chapter may file a written complaint with the commissioner not later than thirty (30) days after the earlier of the date that the person discovers or should have discovered the violation.

(b) If a complaint is filed with the commissioner under subsection (a), the commissioner shall investigate the complaint and attempt to informally resolve the complaint.

(c) If a dispute is not informally resolved within one hundred twenty (120) days after the commissioner receives the complaint, the commissioner shall initiate a proceeding under IC 4-21.5-3-6 and adjudicate the complaint under IC 4-21.5-3. The commissioner shall join the complainant and each person who is alleged to have committed a violation under this chapter as parties to the proceeding. Unless the parties to the proceeding agree to a later date or the interests of justice require, the presiding officer in the proceeding shall schedule a hearing on the complaint to be held not later than one hundred eighty (180) days after the commissioner receives the complaint.

Sec. 32. The commissioner may issue any reasonable order to remedy a violation under this chapter. The order may include the following:

(1) An order that the employee be reinstated in the employee's former position as described in section 23 of this chapter.

(2) A requirement that the violator reimburse the complainant for compensation and benefits lost as a result of the violation.

(3) A requirement that the violator pay the complainant for the reasonable attorney's fees incurred to bring the person's complaint and participate as a party in the informal and formal proceedings under this chapter.

(4) A requirement that the violator pay a civil penalty to the complainant in an amount not to exceed one thousand dollars (\$1,000).

SECTION 12. IC 22-5-3-3 IS AMENDED TO READ AS FOLLOWS[EFFECTIVE JULY 1, 2003]: Sec. 3. (a) This section does



**not apply to an employee governed by section 4 of this chapter.**

**(b)** An employee of a private employer that is under public contract may report in writing the existence of:

- (1) a violation of a federal law or regulation;
- (2) a violation of a state law or rule;
- (3) a violation of an ordinance of a political subdivision (as defined in IC 36-1-2-13); or
- (4) the misuse of public resources;

concerning the execution of public contract first to the private employer, unless the private employer is the person whom the employee believes is committing the violation or misuse of public resources. In that case, the employee may report the violation or misuse of public resources in writing to either the private employer or to any official or agency entitled to receive a report from the state ethics commission under IC 4-2-6-4(b)(2)(G) or IC 4-2-6-4(b)(2)(H). If a good faith effort is not made to correct the problem within a reasonable time, the employee may submit a written report of the incident to any person, agency, or organization.

~~(b)~~ **(c)** For having made a report under subsection (a), an employee may not:

- (1) be dismissed from employment;
- (2) have salary increases or employment related benefits withheld;
- (3) be transferred or reassigned;
- (4) be denied a promotion that the employee otherwise would have received; or
- (5) be demoted.

~~(c)~~ **(d)** Notwithstanding subsections ~~(a)~~ **(b)** through ~~(b)~~ **(c)**, an employee must make a reasonable attempt to ascertain the correctness of any information to be furnished and may be subject to disciplinary actions for knowingly furnishing false information, including suspension or dismissal, as determined by the employer. However, any employee disciplined under this subsection is entitled to process an appeal of the disciplinary action as a civil action in a court of general jurisdiction.

~~(d)~~ **(e)** An employer who violates this section commits a Class A infraction.

SECTION 13. IC 22-5-3-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 4. (a) An employee of a private employer may report the existence of:**

- (1) a violation of a federal law or regulation;**



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1 (2) a violation of a state law or rule; or

2 (3) a violation of an ordinance of a political subdivision (as  
3 defined in IC 36-1-2-13);

4 concerning health or safety to the employer, to any official or  
5 agency whom the employee in good faith believes has jurisdiction  
6 to act concerning the violation, including the commissioner of labor  
7 or an authorized representative of employees, or in any other  
8 manner protected by the National Labor Relations Act. If a good  
9 faith effort is not made to correct the problem within a reasonable  
10 time, the employee may submit a written report of the violation to  
11 any person, agency, or organization.

12 (b) For having made a report under subsection (a), an employee  
13 may not be adversely affected, including the following actions:

14 (1) Dismissal from employment.

15 (2) The withholding of salary increases or employment related  
16 benefits.

17 (3) Transfer or reassignment.

18 (4) The denial of a promotion that the employee otherwise  
19 would have received.

20 (5) Demotion.

21 (c) Notwithstanding subsections (a) and (b), an employee shall  
22 make a reasonable attempt to ascertain the accuracy of any  
23 information to be furnished and may be subject to disciplinary  
24 action for knowingly furnishing false information, including  
25 suspension or dismissal, as determined by the employer.

26 (d) This section does not relieve an employer of its duty to not:

27 (1) discharge an employee; or

28 (2) in any way discriminate against an employee;

29 for the employee's actions permitted under IC 22-8-1.1-38.1.

30 (e) An employee has a private right of civil action for a violation  
31 of:

32 (1) this section; or

33 (2) IC 22-8-1.1-38.1;

34 if the attorney general's office, on behalf of the commissioner of  
35 labor, does not file a suit against the employer for the same conduct  
36 or incident under IC 22-8-1.1-38.1.

37 SECTION 14. IC 22-5-6 IS ADDED TO THE INDIANA CODE AS  
38 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
39 1, 2003]:

40 **Chapter 6. Termination of Employment Relationship**

41 **Sec. 1. As used in this chapter, "discharge for just cause"**  
42 **includes separation from employment for any of the following:**



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(1) A separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge.

(2) A knowing violation of a reasonable and uniformly enforced rule of an employer.

(3) Unsatisfactory attendance, if the individual cannot show good cause for absences or tardiness.

(4) Failure to perform assigned work duties.

(5) Causing damage to the employer's property through willful negligence.

(6) Refusing to obey instructions.

(7) Reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer's premises during working hours.

(8) Conduct endangering safety of self or coworkers.

(9) Incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction or for any breach of duty in connection with work that is reasonably owed an employer by an employee.

Sec. 2. As used in this chapter, "employer" means any individual or type of organization, including the state and its political subdivisions, that has in its employ at least one (1) individual.

Sec. 3. This chapter does not:

(1) affect the terms of a negotiated collective bargaining agreement or settlement agreement; or

(2) negate a bona fide agreement between an employee and employer.

Sec. 4. This chapter applies to employees discharged from employment after June 30, 2004.

Sec. 5. The common law doctrine of employment at will in the state is hereby abrogated.

Sec. 6. An employee may only be discharged for just cause.

Sec. 7. An employee discharged in violation of this chapter may institute a civil action against the employee's former employer.

SECTION 15. IC 22-6-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

**Chapter 5. Employer Notification Before Plant Closings and Mass Layoffs**

Sec. 1. As used in this chapter, "affected employees" means employees who may reasonably be expected to experience an



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1 employment loss as a consequence of a proposed plant closing or  
2 mass layoff by the employees' employer.

3 Sec. 2. (a) As used in this chapter, "employer" means an  
4 individual, partnership, association, limited liability company,  
5 corporation, business trust, state or local government or agency,  
6 and an agent or officer of any of those entities, employing less than  
7 fifty (50) individuals in Indiana.

8 (b) The term does not include the federal government, a  
9 corporation wholly owned by the federal government, or an Indian  
10 tribe.

11 Sec. 3. (a) As used in this chapter, subject to subsection (b),  
12 "employment loss" means:

13 (1) an employment termination, other than a discharge for  
14 cause, voluntary departure, or retirement;

15 (2) a layoff exceeding six (6) months; or

16 (3) a reduction in hours of work of more than fifty percent  
17 (50%) during each month of a six (6) month period.

18 (b) The term does not include a closing or layoff that is the  
19 result of the relocation or consolidation of part or all of an  
20 employer's business if, before the closing or layoff:

21 (1) the employer offers to transfer the employee to a different  
22 site of employment within a reasonable commuting distance  
23 with a break in employment of not more than a six (6)  
24 months; or

25 (2) the employer offers to transfer the employee to any other  
26 site of employment regardless of distance with a break in  
27 employment of not more than a six (6) months, and the  
28 employee accepts the transfer within thirty (30) days of the  
29 later of:

30 (A) the offer; or

31 (B) the closing or layoff.

32 Sec. 4. As used in this chapter, "mass layoff" means a reduction  
33 of force that:

34 (1) is not the result of a plant closing; and

35 (2) results in a employment loss at the single site of  
36 employment during any thirty (30) day period for at least  
37 thirty-three percent (33%) of the employees.

38 Sec. 5. As used in this chapter, "political subdivision" has the  
39 meaning set forth in IC 36-1-2-13.

40 Sec. 6. As used in this chapter, "plant closing" means the  
41 permanent or temporary shutdown of a single site of employment,  
42 or one or more facilities or operating units within a single site of

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1 employment, if the shutdown results in an employment loss at the  
 2 single site of employment during any thirty (30) day period for at  
 3 least twenty (20) employees.

4 Sec. 7. As used in this chapter, "representative" means an  
 5 exclusive representative of employees within the meaning of:

6 (1) Section 158(f) or 159(a) of the National Labor Relations  
 7 Act (29 U.S.C. 151 et seq.); or

8 (2) Section 152 of the Railway Labor Act (45 U.S.C. 151 et  
 9 seq.).

10 Sec. 8. (a) This chapter does not apply to a plant closing or mass  
 11 layoff in the following cases:

12 (1) The closing is:

13 (A) of a temporary facility; or

14 (B) the result of the completion of a particular project or  
 15 undertaking; and

16 the affected employees were hired with the understanding  
 17 that their employment was limited to the duration of the  
 18 facility, project, or undertaking.

19 (2) The closing or layoff constitutes a strike or lockout not  
 20 intended to evade the requirements of this chapter.

21 (b) An employer is not required to provide the written notice  
 22 under section 9 of this chapter when permanently replacing a  
 23 person who is considered to be an economic striker under the  
 24 National Labor Relations Act (29 U.S.C. 151 et seq.).

25 Sec. 9. (a) An employer shall serve written notice of a plant  
 26 closing or mass layoff not later than sixty (60) days before the date  
 27 of the closing or layoff to:

28 (1) each representative of the affected employees at the time  
 29 of the notice, or

30 if there is no representative at the time of the notice, each  
 31 affected employee;

32 (2) the department of workforce development; and

33 (3) the chief elected official of each political subdivision within  
 34 which a plant closing or mass layoff is to occur.

35 (b) The mailing of notice to an employee's last known address  
 36 or the inclusion of the notice with the employee's paycheck are  
 37 acceptable methods for fulfilling the employer's obligation to give  
 38 notice to each affected employee.

39 Sec. 10. (a) An employer is not required to provide the notice  
 40 required by section 9 of this chapter if:

41 (1) at the time that the notice would have been required:

42 (A) the employer was actively seeking capital or business

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that, if obtained, would enable the employer to avoid or postpone the shutdown; and

(B) the employer reasonably and in good faith believed that giving the notice would have precluded the employer from obtaining the needed capital or business;

(2) the closing or mass layoff is caused by business circumstances that were not reasonably foreseeable as of the time that the notice would have been required; or

(3) the closing or mass layoff is the result of a natural disaster.

(b) An employer shall give as much notice as is practicable under the circumstances, including a brief statement of the basis for reducing the notice period.

Sec. 11. A layoff of more than six (6) months that at its outset was announced as a layoff of six (6) months or less shall be treated as an employment loss under this chapter, unless:

(1) the extension beyond six (6) months is the result of business circumstances (including unforeseeable changes in price or cost) not reasonably foreseeable at the time of the initial layoff; and

(2) notice is given at the time that an extension beyond six (6) months becomes reasonably foreseeable.

Sec. 12. Employment losses for more than one (1) group at a single site of employment, each of which is less than the minimum number of employees specified in section 4 or 6 of this chapter for a plant closing or a mass layoff, but that together exceed that minimum number and occur within any ninety (90) day period, are considered to be a plant closing or a mass layoff for purposes of this chapter, unless the employer demonstrates that the employment losses are:

(1) the result of separate and distinct actions and causes; and

(2) not an attempt by the employer to evade the requirements of this chapter.

Sec. 13. (a) In the case of a sale of part or all of an employer's business:

(1) up to and including the effective date of the sale, the seller; and

(2) after the effective date of the sale, the purchaser;

is responsible for providing the notice required by section 9 of this chapter.

(b) Notwithstanding any other provision of this chapter, an individual who is an employee of the seller as of the effective date of a sale shall be considered an employee of the purchaser

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1 immediately after the effective date of a sale.

2 **Sec. 14. (a) As used in this section, "aggrieved employee" means**  
 3 **an employee who:**

4 (1) worked for an employer making a plant closing or mass  
 5 layoff; and

6 (2) as a result of the employer's failure to give the notice  
 7 required by section 9 of this chapter, did not receive the  
 8 required notice, either directly or through the employee's  
 9 representative.

10 (b) If an employer violates this chapter, an aggrieved employee  
 11 may commence an action for the employee, on behalf of other  
 12 employees similarly situated, or both, in the circuit or superior  
 13 court of the county in which the violation is alleged to have  
 14 occurred or in which the employer transacts business.

15 (c) The court shall award to each aggrieved employee who  
 16 suffers an employment loss as a result of the employer's violation  
 17 of this chapter the following:

18 (1) Back pay for each day of violation at a rate of  
 19 compensation not less than the greater of:

20 (A) the average regular rate received by the employee  
 21 during the three (3) years before the date of the closing or  
 22 layoff; or

23 (B) the final regular rate received by the employee.

24 (2) Benefits under an employee benefit plan described in 29  
 25 U.S.C. 1002, including the cost of medical expenses incurred  
 26 during the employment loss that would have been covered  
 27 under an employee benefit plan if the employment loss had  
 28 not occurred.

29 (3) Costs and reasonable attorney's fees.

30 (d) The employer's liability under subsection (c) is calculated for  
 31 the period of the violation, up to a maximum of sixty (60) days, but  
 32 not more than fifty percent (50%) of the number of days that the  
 33 employee was employed by the employer.

34 (e) The amount for which an employer is liable under this  
 35 section to an aggrieved employee is reduced by the following:

36 (1) Wages paid by the employer to the employee for the period  
 37 of violation.

38 (2) A voluntary and unconditional payment by the employer  
 39 to the employee that is not required by a legal obligation.

40 (3) A payment by the employer to a third party or trustee  
 41 (such as premiums for health benefit or payments to a defined  
 42 contribution pension plan) on behalf of and attributable to the

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employee for the period of the violation.

(4) A monetary equivalent equal to the amount of service credited to the employee for all purposes under a defined benefit pension plan for the period of violation.

(f) An employer that violates this chapter with respect to a political subdivision commits a Class C infraction for each day that a violation occurs, up to a maximum of sixty (60) days.

(g) It is a defense to a violation of this chapter that:

(1) the act or omission that violated this chapter was in good faith; and

(2) the employer had reasonable grounds for believing that the act or omission was not a violation of this chapter.

(h) A court does not have the authority to enjoin a plant closing or mass layoff for violation of this chapter.

(i) The remedies provided for in this section are the exclusive remedies for any violation of this chapter.

Sec. 15. The rights and remedies provided to employees by this chapter are in addition to, and not in lieu of, any other contractual or statutory rights and remedies of the employees, and are not intended to alter or affect those rights and remedies, except that the period of notification required by this chapter runs concurrently with any period of notification required by contract or any other statute.

Sec. 16. The commissioner of the department of workforce development may adopt rules under IC 4-22-2 to implement this chapter, including uniform standards by which employers may provide for appropriate service of notice required by this chapter.

SECTION 16. IC 22-9-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) It is the public policy of the state to provide all of its citizens equal opportunity for education, employment, access to public conveniences and accommodations, and acquisition through purchase or rental of real property, including but not limited to housing, and to eliminate segregation or separation based solely on race, religion, color, sex, disability, national origin, **marital status, sexual preference**, or ancestry, since such segregation is an impediment to equal opportunity. Equal education and employment opportunities and equal access to and use of public accommodations and equal opportunity for acquisition of real property are hereby declared to be civil rights.

(b) The practice of denying these rights to properly qualified persons by reason of the race, religion, color, sex, disability, national origin, **marital status, sexual preference**, or ancestry of such person

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1 is contrary to the principles of freedom and equality of opportunity and  
 2 is a burden to the objectives of the public policy of this state and shall  
 3 be considered as discriminatory practices. The promotion of equal  
 4 opportunity without regard to race, religion, color, sex, disability,  
 5 national origin, **marital status, sexual preference**, or ancestry through  
 6 reasonable methods is the purpose of this chapter.

7 (c) It is also the public policy of this state to protect employers,  
 8 labor organizations, employment agencies, property owners, real estate  
 9 brokers, builders, and lending institutions from unfounded charges of  
 10 discrimination.

11 (d) It is hereby declared to be contrary to the public policy of the  
 12 state and an unlawful practice for any person, for profit, to induce or  
 13 attempt to induce any person to sell or rent any dwelling by  
 14 representations regarding the entry or prospective entry into the  
 15 neighborhood of a person or persons of a particular race, religion,  
 16 color, sex, disability, national origin, or ancestry.

17 (e) The general assembly recognizes that on February 16, 1972,  
 18 there are institutions of learning in Indiana presently and traditionally  
 19 following the practice of limiting admission of students to males or to  
 20 females. It is further recognized that it would be unreasonable to  
 21 impose upon these institutions the expense of remodeling facilities to  
 22 accommodate students of both sexes, and that educational facilities of  
 23 similar quality and type are available in coeducational institutions for  
 24 those students desiring such facilities. It is further recognized that this  
 25 chapter is susceptible of interpretation to prevent these institutions  
 26 from continuing their traditional policies, a result not intended by the  
 27 general assembly. Therefore, the amendment effected by Acts 1972,  
 28 P.L.176, is desirable to permit the continuation of the policies  
 29 described.

30 (f) This chapter shall be construed broadly to effectuate its purpose.

31 SECTION 17. IC 22-9-1-3 IS AMENDED TO READ AS  
 32 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. As used in this  
 33 chapter:

34 (a) "Person" means one (1) or more individuals, partnerships,  
 35 associations, organizations, limited liability companies, corporations,  
 36 labor organizations, cooperatives, legal representatives, trustees,  
 37 trustees in bankruptcy, receivers, and other organized groups of  
 38 persons.

39 (b) "Commission" means the civil rights commission created under  
 40 section 4 of this chapter.

41 (c) "Director" means the director of the civil rights commission.

42 (d) "Deputy director" means the deputy director of the civil rights

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1 commission.

2 (e) "Commission attorney" means the deputy attorney general, such  
3 assistants of the attorney general as may be assigned to the  
4 commission, or such other attorney as may be engaged by the  
5 commission.

6 (f) "Consent agreement" means a formal agreement entered into in  
7 lieu of adjudication.

8 (g) "Affirmative action" means those acts that the commission  
9 determines necessary to assure compliance with the Indiana civil rights  
10 law.

11 (h) "Employer" means the state or any political or civil subdivision  
12 thereof and any person employing ~~six (6) or more persons~~ **at least one**  
13 **(1) person** within the state, except that the term "employer" does not  
14 include:

15 (1) any nonprofit corporation or association organized exclusively  
16 for fraternal or religious purposes;

17 (2) any school, educational, or charitable religious institution  
18 owned or conducted by or affiliated with a church or religious  
19 institution; or

20 (3) any exclusively social club, corporation, or association that is  
21 not organized for profit.

22 (i) "Employee" means any person employed by another for wages or  
23 salary. However, the term does not include any individual employed:

24 (1) by ~~his~~ **the individual's** parents, spouse, or child; or

25 (2) in the domestic service of any person.

26 (j) "Labor organization" means any organization that exists for the  
27 purpose in whole or in part of collective bargaining or of dealing with  
28 employers concerning grievances, terms, or conditions of employment  
29 or for other mutual aid or protection in relation to employment.

30 (k) "Employment agency" means any person undertaking with or  
31 without compensation to procure, recruit, refer, or place employees.

32 (l) "Discriminatory practice" means:

33 (1) the exclusion of a person from equal opportunities because of  
34 race, religion, color, sex, disability, national origin, **marital**  
35 **status, sexual preference**, or ancestry;

36 (2) a system that excludes persons from equal opportunities  
37 because of race, religion, color, sex, disability, national origin,  
38 **marital status, sexual preference**, or ancestry;

39 (3) the promotion of racial segregation or separation in any  
40 manner, including but not limited to the inducing of or the  
41 attempting to induce for profit any person to sell or rent any  
42 dwelling by representations regarding the entry or prospective

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entry in the neighborhood of a person or persons of a particular race, religion, color, sex, disability, national origin, **marital status, sexual preference**, or ancestry; or

(4) a violation of IC 22-9-5 that occurs after July 25, 1992, and is committed by a covered entity (as defined in IC 22-9-5-4).

Every discriminatory practice relating to the acquisition or sale of real estate, education, public accommodations, employment, or the extending of credit (as defined in IC 24-4.5-1-301) shall be considered unlawful unless it is specifically exempted by this chapter.

(m) "Public accommodation" means any establishment that caters or offers its services or facilities or goods to the general public.

(n) "Complainant" means:

(1) any individual charging on ~~his~~ **the individual's** own behalf to have been personally aggrieved by a discriminatory practice; or

(2) the director or deputy director of the commission charging that a discriminatory practice was committed against a person other than ~~himself~~ **the director, the deputy director**, or a class of people, in order to vindicate the public policy of the state (as defined in section 2 of this chapter).

(o) "Complaint" means any written grievance that is:

(1) sufficiently complete and filed by a complainant with the commission; or

(2) filed by a complainant as a civil action in the circuit or superior court having jurisdiction in the county in which the alleged discriminatory practice occurred.

The original of any complaint filed under subdivision (1) shall be signed and verified by the complainant.

(p) "Sufficiently complete" refers to a complaint that includes:

(1) the full name and address of the complainant;

(2) the name and address of the respondent against whom the complaint is made;

(3) the alleged discriminatory practice and a statement of particulars thereof;

(4) the date or dates and places of the alleged discriminatory practice and if the alleged discriminatory practice is of a continuing nature the dates between which continuing acts of discrimination are alleged to have occurred; and

(5) a statement as to any other action, civil or criminal, instituted in any other form based upon the same grievance alleged in the complaint, together with a statement as to the status or disposition of the other action.

No complaint shall be valid unless filed within one hundred eighty

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(180) days from the date of the occurrence of the alleged discriminatory practice.

(q) "Sex" as it applies to segregation or separation in this chapter applies to all types of employment, education, public accommodations, and housing. However:

(1) it shall not be a discriminatory practice to maintain separate rest rooms;

(2) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining programs to admit or employ any other individual in any program on the basis of sex in those certain instances where sex is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and

(3) it shall not be a discriminatory practice for a private or religious educational institution to continue to maintain and enforce a policy of admitting students of one (1) sex only.

(r) "Disabled" or "disability" means the physical or mental condition of a person that constitutes a substantial disability. In reference to employment, under this chapter, "disabled or disability" also means the physical or mental condition of a person that constitutes a substantial disability unrelated to the person's ability to engage in a particular occupation.

SECTION 18. IC 22-9-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) The commission shall establish and maintain a permanent office in the city of Indianapolis.

(b) The commission may appoint such attorneys and other employees and agents as it considers necessary, fix their compensation within the limitation provided by law, and prescribe their duties. All these employees, with the exception of the executive director and attorneys, shall be appointed by the commission from eligible lists to be promulgated by the department of personnel as the result of a competitive examination held under IC 4-15-2 and rules of the department and on the basis of training, practical experience, education, and character. However, special consideration and due weight shall be given to the practical experience and training that a person may have for the particular position involved regardless of his



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1 **the person's** academic training. Promotions, suspensions, and removal  
 2 of persons appointed from such lists shall be in accordance with  
 3 IC 4-15-2. The reasonable and necessary traveling expenses of each  
 4 employee of the commission while actually engaged in the performance  
 5 of duties in behalf of the commission shall be paid in accordance with  
 6 the state travel policies and procedures established by the Indiana  
 7 department of administration and approved by the budget agency.

8 (c) Except as it concerns judicial review, the commission may adopt  
 9 rules under IC 4-22-2 to implement this ~~chapter~~ **article**.

10 (d) The commission shall formulate policies to effectuate the  
 11 purposes of this chapter and make recommendations to agencies and  
 12 officers of the state or local subdivisions thereof to effectuate such  
 13 policies. The several departments, commissions, divisions, authorities,  
 14 boards, bureaus, agencies, and officers of the state or any political  
 15 subdivision or agency thereof shall furnish the commission, upon its  
 16 request, all records, papers, and information in their possession relating  
 17 to any matter before the commission.

18 (e) The commission shall receive and investigate complaints  
 19 alleging discriminatory practices. The commission shall not hold  
 20 hearings in the absence of a complaint. All investigations of complaints  
 21 shall be conducted by staff members of the civil rights commission or  
 22 their agents.

23 (f) The commission may create such advisory agencies and  
 24 conciliation councils, local or statewide, as will aid in effectuating the  
 25 purposes of this chapter. The commission may itself, or it may  
 26 empower these agencies and councils to:

27 (1) study the problems of discrimination in the areas covered by  
 28 section 2 of this chapter when based on race, religion, color, sex,  
 29 handicap, national origin, **marital status, sexual preference,** or  
 30 ancestry; and

31 (2) foster through community effort, or otherwise, good will  
 32 among the groups and elements of the population of the state.

33 These agencies and councils may make recommendation to the  
 34 commission for the development of policies and procedures in general.  
 35 Advisory agencies and conciliation councils created by the commission  
 36 shall be composed of representative citizens serving without pay, but  
 37 with reimbursement for reasonable and necessary actual expenses.

38 (g) The commission may issue such publications and such results of  
 39 investigations and research as in its judgment will tend to promote  
 40 good will and minimize or eliminate discrimination because of race,  
 41 religion, color, sex, handicap, national origin, **marital status, sexual**  
 42 **preference,** or ancestry.



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(h) The commission shall prevent any person from discharging, expelling, or otherwise discriminating against any other person because ~~he~~ **the person** filed a complaint, testified in any hearing before this commission, or in any way assisted the commission in any matter under its investigation.

(i) The commission may hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and require the production for examination of any books and papers relating to any matter under investigation or in question before the commission. The commission may make rules as to the issuance of subpoenas by individual commissioners. Contumacy or refusal to obey a subpoena issued under this section shall constitute a contempt. All hearings shall be held within Indiana at a location determined by the commission. A citation of contempt may be issued upon application by the commission to the circuit or superior court in the county in which the hearing is held or in which the witness resides or transacts business.

(j) The commission may appoint administrative law judges other than commissioners, when an appointment is deemed necessary by a majority of the commission. The administrative law judges shall be members in good standing before the bar of Indiana and shall be appointed by the chairman of the commission. An administrative law judge appointed under this subsection shall have the same powers and duties as a commissioner sitting as an administrative law judge. However, the administrative law judge may not issue subpoenas.

(k) The commission shall state its findings of fact after a hearing and, if the commission finds a person has engaged in an unlawful discriminatory practice, shall cause to be served on this person an order requiring the person to cease and desist from the unlawful discriminatory practice and requiring the person to take further affirmative action as will effectuate the purposes of this chapter, including but not limited to the power:

~~(A)~~ **(1)** to restore **the** complainant's losses incurred as a result of discriminatory treatment, as the commission may deem necessary to assure justice; however, this specific provision when applied to orders pertaining to employment shall include only wages, salary, or commissions;

~~(B)~~ **(2)** to require the posting of notice setting forth the public policy of Indiana concerning civil rights and respondent's compliance with the policy in places of public accommodations;

~~(C)~~ **(3)** to require proof of compliance to be filed by **the** respondent at periodic intervals; and



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~~(D)~~ (4) to require a person who has been found to be in violation of this chapter and who is licensed by a state agency authorized to grant a license to show cause to the licensing agency why ~~his~~ **the** license should not be revoked or suspended.

(l) Judicial review of a cease and desist order or other affirmative action as referred to in this chapter may be obtained under IC 22-9-8. If no proceeding to obtain judicial review is instituted within thirty (30) days from receipt of notice by a person that an order has been made by the commission, the commission, if it determines that the person upon whom the cease and desist order has been served is not complying or is making no effort to comply, may obtain a decree of a court for the enforcement of the order in circuit or superior court upon showing that the person is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

(m) If, upon all the evidence, the commission shall find that a person has not engaged in any unlawful practice or violation of this chapter, the commission shall state its findings of facts and shall issue and cause to be served on the complainant an order dismissing the complaint as to the person.

(n) The commission may furnish technical assistance requested by persons subject to this chapter to further compliance with this chapter or with an order issued thereunder.

(o) The commission shall promote the creation of local civil rights agencies to cooperate with individuals, neighborhood associations, and state, local, and other agencies, both public and private, including agencies of the federal government and of other states.

(p) The commission may reduce the terms of conciliation agreed to by the parties to writing (to be called a consent agreement) that the parties and a majority of the commissioners shall sign. When signed, the consent agreement shall have the same effect as a cease and desist order issued under subsection (k). If the commission determines that a party to the consent agreement is not complying with it, the commission may obtain enforcement of the consent agreement in a circuit or superior court upon showing that the party is not complying with the consent agreement and the party is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

(q) In lieu of investigating a complaint and holding a hearing under this section, the commission may issue an order based on findings and determinations by the federal Department of Housing and Urban Development or the federal Equal Employment Opportunity

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Commission concerning a complaint that has been filed with one (1) of these federal agencies and with the commission. The commission shall adopt by rule standards under which the commission may issue such an order.

(r) Upon notice that a complaint is the subject of an action in a federal court, the commission shall immediately cease investigation of the complaint and may not conduct hearings or issue findings of fact or orders concerning that complaint.

SECTION 19. IC 22-9-1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. Every contract to which the state or any of its political or civil subdivisions is a party, including franchises granted to public utilities, shall contain a provision requiring the contractor and his subcontractors not to discriminate against any employee or applicant for employment to be employed in the performance of such contract, with respect to his hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of his race, religion, color, sex, disability, national origin, **marital status, sexual preference**, or ancestry. Breach of this covenant may be regarded as a material breach of the contract.

SECTION 20. IC 22-9-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. In addition to its power to investigate the discriminatory practices referred to in this chapter, the commission may receive written complaints of violation of this chapter or other discriminatory practices based upon race, religion, color, sex, national origin, **marital status, sexual preference**, or ancestry and to investigate such complaints as it deems meritorious, or to conduct such investigation in the absence of complaints whenever it deems it in the public interest. It may transmit to the general assembly its recommendations for legislation designed to aid in the removing of such discrimination.

SECTION 21. [EFFECTIVE JANUARY 1, 2004] **(a) IC 22-2-15, as added by this act, does not excuse noncompliance with a provision of a collective bargaining agreement or other employment benefit program or plan in effect on January 1, 2004, that is not in substantial conflict with IC 22-2-15, as added by this act. IC 22-2-15, as added by this act, does not justify an employer in reducing employment benefits provided by the employer that are in excess of the benefits required by IC 22-2-15, as added by this act.**

**(b) This SECTION expires July 1, 2005.**

SECTION 22. [EFFECTIVE JANUARY 1, 2004] **(a)**

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1 Notwithstanding IC 22-2-15-29, as added by this act, the  
 2 commissioner of labor shall carry out the duties imposed upon the  
 3 commissioner under IC 22-2-15-29, as added by this act, under  
 4 interim written guidelines approved by the commissioner of labor.

5 (b) This SECTION expires on the earlier of the following:

6 (1) The date rules are adopted under IC 22-2-15-29, as added  
 7 by this act.

8 (2) June 30, 2005.

9 SECTION 23. [EFFECTIVE JANUARY 1, 2004] (a) The  
 10 commissioner of labor shall, before January 1, 2005, educate  
 11 employers and employees, in a manner the commissioner  
 12 determines to be appropriate, regarding the rights and  
 13 responsibilities of employers and employees under IC 22-2-15, as  
 14 added by this act.

15 (b) This SECTION expires January 1, 2005.

16 SECTION 24. [EFFECTIVE JULY 1, 2003] (a) Notwithstanding  
 17 IC 22-6-5-16, as added by this act, the commissioner of the  
 18 department of workforce development shall carry out the duties  
 19 imposed upon the commissioner under IC 22-6-5-16, as added by  
 20 this act, under interim written guidelines approved by the  
 21 commissioner.

22 (b) This SECTION expires on the earlier of the following:

23 (1) The date rules are adopted under IC 22-6-5-16, as added  
 24 by this act.

25 (2) June 30, 2004.

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